IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

FIRST APPEAL No 4620 of 1997

with

FIRST APPEAL No 4621 of 1997

GUJARAT STATE ROAD TRANSPORT CORPORATION
VERSUS
BHAWAN PEHUMAL

Appearance:
MR HARDIK C RAVAL for the Appellant

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision: 23/09/98

C.A.V. ORDER

1. These two appeals arise from the common judgment and award passed by the Motor Accident Claims Tribunal (Auxi.) Kachchh at Bhuj in Motor Accident Claims Petition No.51 and 52 of 1989 decided on 29-9-1997 and as such the same are being taken up for hearing together and are being disposed of by this common order.

2. Brief facts of the case are that the injured claimants, respondents in both these appeals, filed two separate claim petitions to recover the compensation on account of accident which took place on 24-6-1988 at Adipur - Gandhidham Highway Road. As both these claim petitions have arisen out of the same accident, at the request of the counsel for the parties these were consolidated and common evidence has been led and both these claim applications were decided under common order.

3. The claimant-respondent Bhawan son of Pehumal, petitioner in M.A.C.P. No.51/89 was going on the scooter and the scooter was driven by the claimant-respondent Gurumukhdas, petitoner in M.A.C.P.

No.52/89. They were going on the correct side of the Road and the opponent-respondent No.2 driver of the appellant, driving the S.T. Bus No.GRU 9258 in most rash and negligent manner caused the accident due to which both the claimants-respondents sustained serious injuries. They were taken to Rambaug Hospital, Gandhidham and thereafter they were shifted to G.K. General Hospital, Bhuj. Even after discharge from the hospital, they have taken further treatment from private practitioners. In these circumstances, each claimant-respondent claimed compensation of Rs.1,00,000/- under various heads from the driver and owner of the vehicle jointly and severally with running interest at the rate of 18% p.a..

4. The defence of the appellant-Corporation was that the accident had not taken place due to rash and negligent driving of the driver of the S.T. bus. The rash and negligent driving was attributed to the driver of the scooter, Gurumukhdas. It was the case of the Corporation that the scooter dashed from the rear side of the Bus as a result thereof the claimants-respondents sustained injuries. Under the impugned award, the Tribunal has awarded Rs.63,690/- as compensation to the claimant-respondent Bhawan i.e. the petitioner in M.A.C.P. No.51/89 and Rs.72,000/- to the claimant-respondent Gurumukhdas i.e. the petitioner in M.A.C.P. No.52/89. Both these claimants-respondents were awarded interest at the rate of 15 % p.a. from the date of the petitions till realisation. The Tribunal found the contributory negligence of the driver of the S.T. Bus and scooter in the ratio of 75% : 25% respectively.

The details of the amount of compensation awarded under different heads in M.A.C.P. No.51/89 are as under:

Rs.20,000/- for pain, shock and sufferings.
Rs.7,000/- for medical expenses.
Rs.5,000/- for nursing and care.
Rs.2,000/- for conveyance charges.
Rs.2,000/- for restorative food.
Rs.12,000/- for loss of income.
Rs.36,920/- for loss of future income.

Rs.84,920/- total.

After deducting 25% thereof, an amount of Rs.63,690/- has been awarded.

The details of the amount of compensation awarded under

different heads in M.A.C.P. No.52/89 are as under:

Rs.20,000/- for pain, shock and sufferings.
Rs.10,000/- for medical expenses.
Rs.8,000/- for nursing and care.
Rs.6,000/- for conveyance charges.
Rs.4,000/- for restorative food.
Rs.48,000/- for loss of future income.

Rs.96,000/- total.

After deducting 25% thereof, an amount of Rs.72,000/has been awarded.

5. Learned counsel for the appellant contended that the Tribunal has committed serious illegality in holding the driver of the S.T. Bus to be negligent to the extent of 75% in this case. The accident had resulted because of the rash and negligent driving on the part of the driver of the scooter.

6. Though this contention has been raised, the learned counsel for the appellant is unable to satisfy this court with reference to the evidence led in the case that the finding as recorded by the Tribunal to fix the contributory negligence of the driver of the S.T. bus and scooter driver in the ratio of 75 : 25 is illegal. The learned Tribunal relying on the evidence produced by the petitioners has recorded a finding of fact that the percentage of negligence in the accident of S.T. driver was 75 %. The learned Tribunal rightly observed that the finding recorded in the criminal case is not binding on the Tribunal. The Tribunal has to decide on the strength of evidence produced before it by the parties on this question of negligence of the drivers. The Tribunal has rightly not accepted that merely because the chargesheet has been filed against the scooter driver in the criminal court his negligence cannot be taken to the extent of 100%. Relying on the panchnama, Ex.28, the learned Tribunal has not committed any error in holding the defence taken by the Corporation that at the time of accident its bus was in a standstill position as not correct. To reach to this finding, the learned Tribunal has also placed reliance on the statement of injured as well as one independent witness namely, AliMamad Bhachu Ex.63 one of the passengers in the S.T. Bus. The injured persons and the independent witness made a statement that at the time of accident the bus was going in excessive speed, it overtook the scooter and proceeded onwards and after sometime applied the brakes all of a sudden and the

scooter dashed with the bus from the rear side. Learned counsel for the appellant is unable to point out any error in the finding aforesaid recorded by the Tribunal. The finding recorded by the Tribunal that the S.T. bus was not in a standstill position and it overtook the scooter and proceeded onwards and after some time applied the brakes all of a sudden and scooter dashed on the rear side of the bus does not suffer from any infirmity, which calls for interference of this court. In the presence of the evidence and findings as recorded, I have my own reservation whether the negligence of the scooterist could have been taken. However, the Tribunal held in this case the scooterist also liable to the extent of 25%. Be that as it may. I do not find any illegality in the findings of the Tribunal recorded on issue No.1. Otherwise also, this court sitting in appeal normally should not interfere with the finding of the Tribunal recorded on the rash and negligent driving on the part of the respective drivers.

7. So far as the quantum of compensation awarded to both the claimants is concerned, the learned counsel for the appellant is unable to make out any case.

8. The claimant of M.A.C.P. No.51/89 i.e. Bhawan son of Pehumal sustained injuries on left leg and various other parts of the body. He sustained injury of fracture on left leg. He has undergone operation at G.K. General Hospital, Bhuj. After discharge from G.K. General Hospital again he was admitted in Divine Life Hospital of Adipur and he was treated as indoor patient for one month. He was operated and nailing was done again and the plaster was there for six months. Due to this injury he sustained permanent disability of left leg. From the medical evidence produced, the Tribunal found that this claimant has taken treatment for 28 days in G.K. General Hospital, Bhuj and he has taken 20 days treatment at Divine Life Hospital, Adipur. In the Hospital, intramodular nailing with bone grafting of left tibia was done. The plaster was there for about 60 days. So his follow-up treatment was continued till 17-1-1989. In the circumstances, awarding of Rs.20,000/under the head of pain, shock and sufferings to this claimant cannot be said towards the higher side. Similarly looking to this nature of treatment and operation undergone, the amount of Rs.7000/- awarded under the head of medical expenses also cannot be said to be towards the higher side. It appears to be towards the lower side. The compensation awarded under other heads except the head - future loss has not been

seriously challenged. So far as the compensation under the head future loss is concerned, the income of the claimant has been taken to be Rs.1200/- p.m. and his prospective income was taken to be Rs.1700/-. His functional disability was taken to be 12% and thus annual loss of income was taken to be Rs.2448/-. Taking into consideration his age of 32 years, the multiplier of 15 was applied. From the facts which have come on record it cannot be said that the functional disability of 12% taken is towards the higher side. According to Orthopedic Surgeon, Dr. H.C. Hotchandani, this claimant sustained permanent partial disability of 25 % of lower limb and on that basis the disability of body as a whole considered to be 12 % by the Tribunal is not towards the higher side. The monthly income which has been taken of the claimant looking to his age also cannot be said to be towards the higher side.

9. In the case of M.A.C.P. No.52/89, the claimant was of the age 60 years and his monthly income has been taken to be Rs.2000/- per month which is not towards the higher side. As per the medical certificate, he was having disability of 50% of upper limb and disability of 30% of lower limb. Looking to the injuries, the Tribunal has not committed any error in holding that his earning capacity has been reduced to the extent of 50%. The multiplier of 5 has been applied which also cannot be said to be towards the higher side. The amounts which have been awarded under different heads also taking into consideration the totality of the facts of this case cannot be said to be towards the higher side. Looking to the injuries he has been awarded only Rs.20,000/- under the head - pain, shock and sufferings, which seems to be towards the lower side. The medical expenses awarded of Rs.10,000/- to this person is also not towards the higher side. The Tribunal has awarded in both the matters, just and reasonable compensation for the injuries sustained by the claimants, to which no exception can be taken.

10. In the result, both these appeals fail and the same are dismissed.

(S.K.Keshote,J)

zgs/-